IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 174 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S J AND S P FAMILY TRUST

Versus

DY.C.I.T.(ASST.)

Appearance:

1. TAX APPEAL No. 174 of 2004

MR SN SOPARKAR, SR. ADVOCATE FOR MRS SWATI SOPARKAR for appellant

MR MANISH R BHATT for Respondent

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 22/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. Heard Mr.S.N.Soparkar, the learned Senior Advocate for the appellant.

2. ADMIT. The following substantial question of law arises from the order of the Tribunal dated 3rd November 2003.

"Whether, on the facts and in the circumstances of the case, it was open to the Tribunal to pass an order on the basis of written submissions filed by the Departmental Representative without assigning any independent reasons so as to reflect the application of mind by the Tribunal?"

3. In light of the facts of the case, the appeal is taken up for final hearing and disposal.

4. The Assessment Year is 1993-94 and the relevant account period is the year ended on 31st March 1993. The assessee claimed deduction under Section 80IA of the Income Tax Act, 1961 (the Act). The Assessing Officer disallowed the same for the reasons stated in the assessment order. The CIT (Appeals) upheld the claim of the assessee in the appeal filed by the assessee. The revenue carried the matter in appeal before the Tribunal. In paragraph No.3 of the impugned order, the Tribunal has reiterated what the Assessing Officer has stated as well as in the latter portion of the same paragraph, paragraph No.6 of the order of CIT (Appeals) has been re-produced. Paragraph No.4 of the order of the Tribunal records the submissions made by the Departmental Representative as well as the Authorised Representative of the assessee. Thereafter, in the same paragraph, the finding in relation to other claims made by the assessee under Sections 80HH and 80IA of the Act, has been recorded, following the Tribunal's own order.

5. However, in the same paragraph, the Tribunal thereafter states that, as far as the claim of deduction under Section 80IA of the Act is concerned, it agrees with the contentions of the learned Departmental Representative, and the said contentions have been re-produced in entirety. The only finding that follows thereafter is "The AO is directed accordingly.".

6. Though the learned standing counsel for the revenue, who appears on notice, has made strenuous

efforts to submit that the Tribunal's order, on merits, was perfectly in order, but it was only the modality adopted by the Tribunal, which could be said to be deficient, and for this purpose, an order which was otherwise correct on merits, was not required to be interfered with.

7. Having heard the parties, and in light of the facts narrated hereinbefore, it is apparent that the Tribunal has made a short-shrift of its duty to adjudicate. This Court has, time and again, reiterated the procedure required to be adopted by the Tribunal so as to ensure that the order, which is an appealable order, reflects not only its conclusion, but the decision-making process also. Reasons, howsoever brief, are the soul and backbone of an order. In absence of such reasons, which must be reflected on reading of the order, it is not possible to state as to whether the Tribunal was aware as to what the controversy was before it, and what were the factors pro and con in relation to the said issue, and the reasons which ultimately weighed with the Tribunal for arriving at a decision.

8. In these circumstances, as the facts of the case go to show, the impugned order of the Tribunal, if one can term it to be an order, on the issue of deduction under Section 80IA of the Act, cannot be sustained in law. The order dated 3rd November 2003 in relation to ground regarding deduction under Section 80IA of the Act is, hence, quashed and set aside, and the appeal of the revenue being I.T.A. No. 956/AHD/1997 is restored to file of the Tribunal, to be disposed of denovo after giving proper opportunity of hearing to both the sides.

9. The question is hence answered accordingly i.e. the Tribunal could not have passed the impugned order on the basis of written submissions filed by the Departmental Representative without assigning independent reasons so as to reflect application of mind by the Tribunal. The appeal is allowed. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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